BEFORE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION OF THE STATE OF MONTANA

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APPLICATION TO CHANGE WATER RIGHT NO. 76G 30151093 BY CLARK FORK COALITION)))	**PRELIMINARY DETERMINATION TO GRANT TEMPORARY CHANGE**

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On March 22, 2021, the Clark Fork Coalition (Applicant) submitted Application to Change Water Right No. 76G 30151093 to temporarily change Water Right Claim Nos. 76G 30103779, 76G 30103783, and 76G 30103785 to the Missoula Regional Office of the Department of Natural Resources and Conservation (Department or DNRC). On January 28, 2022, final processing of this application was transferred to the Central Office of the DNRC Water Rights Bureau in Helena. A pre-application meeting was held between the Department and the Applicant on January 21, 2021. The Department published receipt of the Application on its website. The Department sent the Applicant a deficiency letter under § 85-2-302, Montana Code Annotated (MCA), dated August 30, 2021. The Applicant responded with information dated November 26, 2021. The Application was determined to be correct and complete as of September 30, 2022. The Department met with the Applicant to discuss the application on November 21, 2022. An Environmental Assessment for this Application was completed on January 6, 2023.

APLICATION INFORMATION

The Department considered the following information submitted by the Applicant, which is contained in the administrative record.

Application as filed:

- Application to Change an Existing Irrigation Water Right, Form 606-IR
- Change to Instream Flow Addendum (Form 606-IFA)
- Change of Purpose Addendum (Form 606-PA)
- Temporary Change Addendum (Form 606-TCA)
- Attachments
    - Aerial map of proposed place of use and point of diversion, streamflow measurement site, and proposed instream reach
    - July 30, 1977 aerial photo showing place of use, point of diversion, and ditch for Claims 76G 30103779, 76G 30103783, and 76G 30103785

- July 30, 1977 aerial photo showing DNRC Water Resource Survey recorded acres, place of use, and ditch for Claims 76G 30103779, 76G 30103783, and 76G 30103785
- July 16, 1966 aerial photo showing DNRC Water Resource Survey recorded acres, place of use, and ditch for Claims 76G 30103779, 76G 30103783, and 76G 30103785
- Measurement Records and Ditch Seepage Information (2001-2010) for the Helen Johnson Ditch
- Historic Use Affidavits from John Thomas (signed November 22, 2013) and Hans Lampert (signed November 12, 2013)
- Manning's Equation Ditch Capacity Calculation for Helen Johnson Ditch and Alvi-Beck Ditch
- Photos of Helen Johnson Ditch Headgate (8/25/2011) and Historic Place of Use (7/26/2013)
- Water Ownership Update Fee Receipt & Confirmation dated March 22, 2021

Information received after application filed

- Email from Applicant to Department requesting a proposed trigger flow rate, modified measuring plan, and minor amendment to proposed period of use, sent November 28, 2022
- Response to Department Deficiency Letter from Applicant, received November 26, 2021
- Historical Water Use Addendum (Form 606-HUA), received November 26, 2021
    - Historic Diverted Volume Calculations for Claims 76G 30103779, 76G 30103783, and 76G 30103785
    - Aerial Map of the Helen Johnson Ditch and Distance from Helen Johnson Ditch Headgate to shared ditch water right owners' places of use
    - Aerial Map of the Apportionment of Historical Hand-line Sprinkler and Wild Flood Irrigated Acres Across the Historical Place of Use
    - Updated Measurement Records and Ditch Seepage Information for the Helen Johnson Ditch

Information within the Department's Possession/Knowledge

- Statement of Claim Files 76G 30103779, 76G 30103783, and 76G 30103785
- DNRC Irrigation Change Application Technical Report, dated September 30, 2022
- DNRC Surface Water Change Report and Return Flow Analysis conducted by Evan Norman, DNRC Groundwater Hydrologist, dated September 27, 2022
- 1955 Deer Lodge County Water Resources Survey, maps, and field notes

- DNRC 2002 Upper Clark Fork Ditch Efficiency Assessment (DNRC Report WR-3.C.2.UCF)
- Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans (Natural Resource Damage Program, 2019)
- Upper Clark Fork River Flow Story (Upper Clark Fork River Basin Steering Committee, 2006)
- Montana Cadastral parcel and property information

The Department also routinely considers the following information. The following information is not included in the administrative file for these applications but is available upon request. Please contact the Water Rights Bureau Central Office at 406-444-9556 to request copies of the following documents.

- DNRC Return Flow Memo, dated April 1, 2016
- DNRC Change in Irrigation Method Policy Memo, dated December 2, 2015
- DNRC Consumptive Use and Irrecoverable Loss Memo, dated April 15, 2013
- DNRC Historic Diverted Volume Standard Methods Memo, dated September 13, 2012
- DNRC Consumptive Use Methodology Policy Memo, dated March 17, 2010

The Department has fully reviewed and considered the evidence and argument submitted in this Application and preliminarily determines the following pursuant to the Montana Water Use Act (Title 85, Chapter 2, Part 3, Part 4, MCA).

WATER RIGHTS TO BE CHANGED

FINDINGS OF FACT

1. Statement of Claim Nos. 76G 30103779, 76G 30103783, and 76G 30103785 are proposed to be changed in this application. These water rights were split by the Applicant from parent Claims 76G 40509-00, 76G 40513-00, and 76G 40514-00, respectively, by ownership in 2015, then severed from their historical place of use on April 3, 2020 to create the child rights listed in Table 1. The three parent water rights listed above and their other child rights are not proposed for change in this application. The water rights proposed for change in this application are filed irrigation rights that are entirely supplemental to one another, claiming the same 133-acre irrigated place of use (including 90 hand-line sprinkler-irrigated acres and 43 wild flood-irrigated acres). There are no other water rights supplemental to those being changed. These water rights claim two primary points of diversion in the Clark Fork River including the Helen Johnson Ditch Headgate in the SENENE of Section 7, Township (T) 5 North (N) Range (R) 9 West (W), and the Alvi-Beck Ditch Headgate in the NENWSE of Section 29, T6N R9W in Deer Lodge County. The claimed places of use for these three water rights are located in Sections 32

and 33 in T6N, R9W, Deer Lodge County. The parent water rights for Claims 76G 30103779, 76G 30103783, and 76G 30103785 were included in the Preliminary Decree for Basin 76G issued May 17, 1985. The elements of the water right proposed for change are shown below:

Table 1. Elements of Nos. 76G 30103779, 76G 30103783, and 76G 30103785:

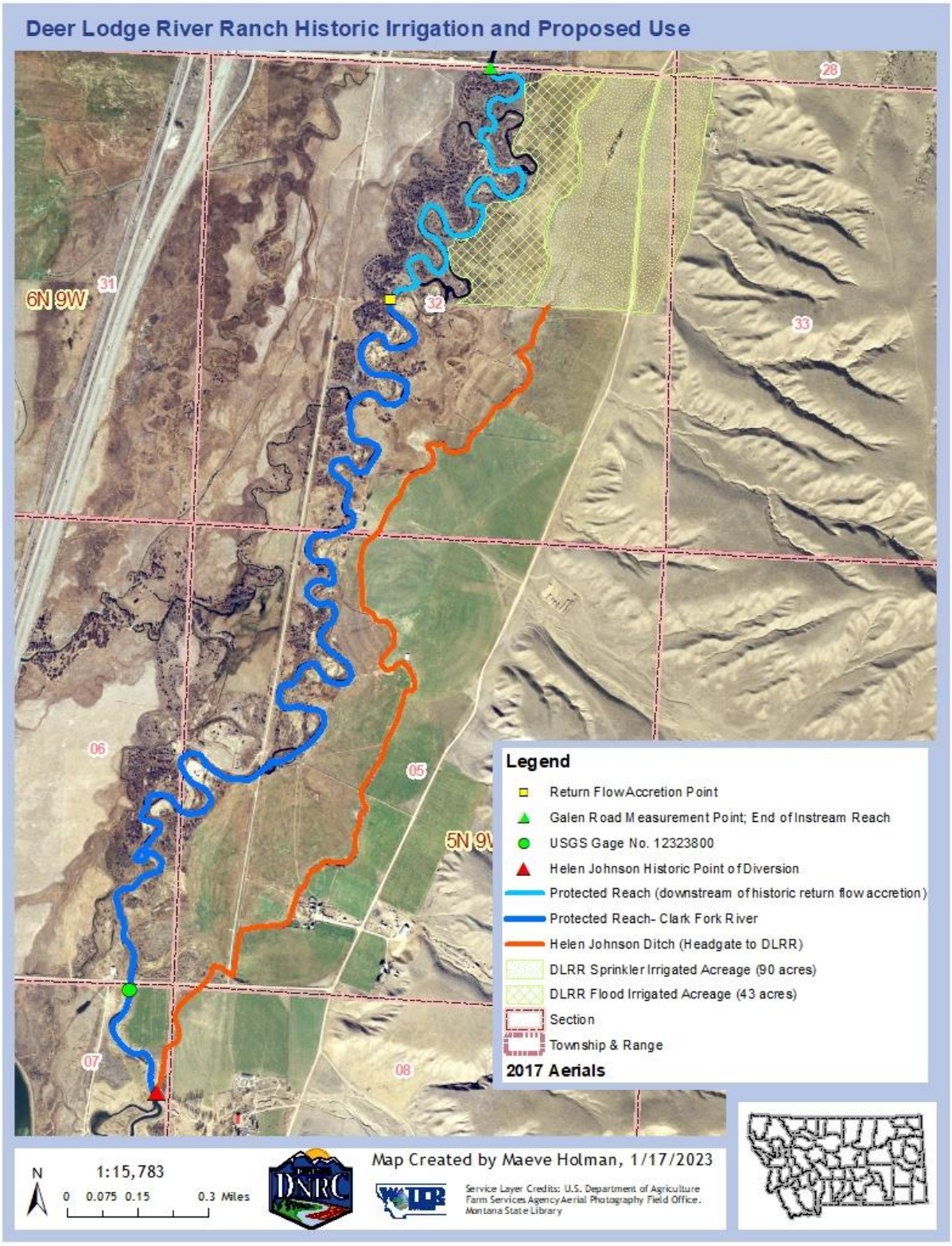
WR Number	Purpose	Flow Rate	Period of Use	Point of Diversion	Place of Use	Priority Date	Claimed Acres
76G 30103779	Irrigation	2.4 CFS	4/1- 11/19	SENENE Sec. 7 T5N R9W, NENWSE Sec. 29 T6N R9W	NE Sec. 32, W2W2NW Sec. 33, T6N R9W	7/10/1920	133
76G 30103783		2.4 CFS				7/26/1953	
76G 30103785		1.2 CFS	4/1- 11/4			12/31/1875	

2. The water rights being changed in this application are located in the Upper Clark Fork River Basin (Basin 76G) which is subject to a legislative water right basin closure.

CHANGE PROPOSAL

FINDINGS OF FACT

3. The Applicant proposes to temporarily change the purpose and place of use of Claims 76G 30103779, 76G 30103783, and 76G 30103785 from irrigation to instream flow for the benefit of the fishery resource in the Clark Fork River in Deer Lodge County for a period of 10 years with the option to renew. During the term of this proposed temporary change the 133-acre historical place of use will be retired from irrigation and a total flow rate and volume of up to 6 CFS and 424.3 acre-feet (AF) will be left instream with all three water rights in the Clark Fork River. The proposed instream period of use is July 15 to September 30. The proposed instream place of use extends 4.3 miles from the historic point of diversion in the SENENE Section 7 T5N R9W to Galen Road Bridge (adjacent to the downstream extent of the historically irrigated place of use) in the N2NWNE of Section 32, T6N R9W. During the term of this proposed temporary change a combined flow rate and volume of 6 CFS and 424.3 AF (historically diverted volume) will remain instream from the historic point of diversion at the Helen Johnson Ditch Headgate to the point where return flows historically accreted in the Clark Fork River in the NESW of Section 32, T6N R9W, and a combined flow rate and volume of 6 CFS and 131.2 AF (historically consumed volume) will remain instream from the point where return flows historically accreted to the end of the instream place of use. Map 1 shows the proposed elements of this change.



Map 1. Deer Lodge River Ranch Historic Irrigation and Proposed Use

CHANGE CRITERIA

4. The Department is authorized to approve a temporary change if the applicant meets its burden to prove the applicable § 85-2-402, 407, and 408, MCA, criteria by a preponderance of the evidence. Matter of Royston, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); Hohenlohe v. DNRC, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an applicant's burden to prove change criteria by a preponderance of evidence is "more probable than not."); Town of Manhattan v. DNRC, 2012 MT 81, ¶ 8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in § 85-2-402(2), MCA, are:

> (2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:
>
> (a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
>
> (c) The proposed use of water is a beneficial use.

5. In addition to the § 85-2-402(2), MCA,[1] an applicant for a temporary change authorization for instream flow must comply with the requirements and conditions set forth in §§ 85-2-407 and -408, MCA. Section 85-2-408, MCA provides in part:

> (1) The department shall accept and process an application for a temporary change in appropriation rights to maintain or enhance instream flow to benefit the fishery resource under the provisions of **85-2-402, 85-2-407,** and this section. The application must:
>
> (a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and
>
> (b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured.
>
> (2) (a) A temporary change authorization under the provisions of this section is allowable only if the owner of the water right voluntarily agrees to:
>
> (i) change the purpose of a consumptive use water right to instream flow for the benefit of the fishery resource; or
>
> (ii) lease a consumptive use water right to another person for instream flow to benefit the fishery resource.
>
> (3) In addition to the requirements of **85-2-402** and **85-2-407,** an applicant for a change authorization under this section shall prove by a preponderance of evidence that:

[1]Pursuant to §85-2-402 (2)(b) and -402(2)(d), MCA, the Applicant is not required to prove that the proposed means of diversion, construction, and operation of the appropriation works are adequate and is not required to prove possessory interest in the place of use because this application involves a temporary change in appropriation right for instream flow pursuant to § 85-2-408 MCA.

> (a) the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons; and
> (b) the amount of water for the proposed use is needed to maintain or enhance instream flows to benefit the fishery resource.
> …
> (5) The department shall approve the method of measurement of the water to maintain and enhance instream flow to benefit the fishery resource through a temporary change authorization as provided in this section.
> . . . .
> (8) The maximum quantity of water that may be changed to maintain and enhance streamflows to benefit the fishery resource is the amount historically diverted. However, only the amount historically consumed, or a smaller amount if specified by the department in the lease authorization, may be used to maintain or enhance streamflows to benefit the fishery resource below the existing point of diversion.

6. Pursuant to §§ 85-2-407, and -408, MCA, a temporary change for authorization for instream flow is subject to special conditions which are identified above and addressed in the sections below. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. E.g., Hohenlohe, at ¶¶ 29-31; Town of Manhattan, at ¶ 8.

HISTORIC USE

FINDINGS OF FACT

7. Claims 76G 30103779, 76G 30103783, and 76G 30103785 were historically used for the irrigation of 133 acres in the NE of Section 32, T6N R9W and the W2W2NW of Section 33, T6N R9W. The 133 historically irrigated acres included 90 acres of hand-line sprinkler irrigation and 43 acres of wild flood irrigation. Affidavits by previous Deer Lodge River Ranch lessees John Thomas (signed November 22, 2013) and Hans Lampert (signed November 12, 2013) were provided in the application materials corroborating the Applicant's assertion that current irrigation conditions closely resemble historical irrigation practices, as no improvements have been made to irrigation operation since 1973. The 1966 aerial photo submitted in the application materials corroborates the irrigation of 133 acres in the historical place of use. Based on this information, the Department finds a 133-acre historical irrigation place of use for all three water rights being changed.

8. Claims 76G 30103779, 76G 30103783, and 76G 30103785 were historically diverted at a headgate located in the SENENE of Section 7, T5N R9W and conveyed 2.36 miles to the historic

place of use via the Helen Johnson Ditch. All three water rights proposed for change also list a point of diversion located at the Alvi-Beck Ditch headgate; however, according to the Applicant water was not historically diverted at this location with these water rights because it is downstream of and could not have been used to irrigate the historic place of use. The reason this diversion is listed for the water rights is because their parent rights were originally part of a much larger property and exercised at both locations. Based on this information the Department will only assess historical conveyance losses for the Helen Johnson Ditch and will not consider the Alvi-Beck Ditch to have been a historical means of conveyance for the water rights being changed.

9. Claims 76G 30103784, 76G 30103782, and 76G 30103778 also list the Helen Johnson Ditch as a means of conveyance and are child rights of Claims 76G 40514-00, 76G 40513-00, and 76G 40509-00 with Claims 76G 30103785, 76G 30103783, and 76G 30103779, respectively. Claims 76G 30103784 and 76G 30103778 are also owned by the Applicant and underwent a temporary change in 2019 that added a purpose of instream flow and changed their point of diversion and means of conveyance from the Helen Johnson Ditch to a pump system in the Clark Fork River (see Temporary Change Authorization 76G 30069060). Claim 76G 30103778 lists a claimed flow rate of 7.88 CFS; however, based on information in the application materials and historic use findings made in the Preliminary Determination (PD) to Grant Change Application 76G 30069060, only 7.15 CFS of the total flow rate was diverted into the Helen Johnson Ditch while the remaining flow rate was diverted into the Alvi-Beck Ditch. Additionally, based on information in the application materials and historic use findings made in the PD to Grant Application 76G 30069060, Claim 76G 30103782 (child right with Claim 76G 30103783) was never historically diverted into the Helen Johnson Ditch despite the ditch being listed as a point of diversion on the General Abstract for this water right. According to the Applicant and pursuant to the historic use findings made in the PD to Grant Application 76G 30069060, the acres currently listed on the General Abstracts for parent Claims 76G 40509-00, 76G 40513-00, and 76G 40514-00 were (and are) only able to receive water from the Alvi-Beck Ditch. Based on this information, the Department will not consider Claims 76G 30103782, 76G 40509-00, 76G 40513-00, and 76G 40514-00 in the historic capacity calculations for the Helen Johnson Ditch. Table 2 below lists the water rights and flow rates within the Helen Johnson Ditch considered when assessing ditch capacity.

Table 2. Water rights within the Helen Johnson Ditch:

Helen-Johnson Ditch Water Rights	
Water Right	**Flow Rate (CFS)**
76G 116490 00	3.75
76G 116491 00	3.13
76G 116493 00	7.2
76G 30103779	**2.4**
76G 30103783	**2.4**
76G 30103785	**1.2**
76G 30103784	3.95
76G 30103778	7.15
Total Flow Rate	**24.03 CFS**

10. The Helen Johnson Ditch extends approximately 2.36 miles (12,460 feet) from the headgate in the SENENE of Section 7, T5N R9W, to the point where it arrives at the Applicant's place of use in the NE of Section 32, T6N R9W. The Applicant submitted Helen Johnson Ditch dimensions and specifications, as well as a Manning's roughness calculation and *n* coefficient of 0.03 in the application materials that substantiate a historical ditch capacity of 35.5 CFS. The Department also made a historic use finding for this capacity for the Helen Johnson Ditch in the PD to Grant Application 76G 30069060. Based on this information and the information presented in FOF 9, the Department finds the maximum historical flow rate for Claims 76G 30103779, 76G 30103783, and 76G 30103785 are 2.4 CFS, 2.4 CFS, and 1.2 CFS, respectively, resulting in a combined historical flow rate of 6 CFS.

11. The historically consumed volumes for these claims were quantified using the methods outlined in ARM 36.12.1902(16) as elected by the Applicant. The 77.6% 1964-1973 management factor for Powell County was applied to the Deer Lodge weather station flood evapotranspiration water requirement of 13.14 inches. Irrecoverable loss and on-farm efficiency values of 5% and 25% were used for the calculation of the historic consumed volume on the 43 wild flood irrigated acres. Irrecoverable loss and on-farm efficiency values of 10% and 70% were used for the calculation of the historic consumed volume on the 90 acres of hand-line sprinkler irrigated acres. The Applicant explained that diversions typically began as early as April 1 and ended as late as November 19; however, the Applicant elected to use the standard period of use of April 20 October 10 (174 days) for Climate Area 4 as described in ARM 36.12.112(c). The volume of water historically consumed during irrigation of the Applicant's historical place of use, including irrecoverable losses and other variables used in the Department's calculation, are summarized in Tables 3 and 4. The Department finds the total historic consumptive and field application volumes for the place of use proposed for change are 131.2 AF and 255.5 AF, respectively.

Table 3. Historic consumed volume (HCV) and field application volume for the historical 43.0-acre wild flood place of use:

Powell County Wild Flood ET	Historic (1964-1973) Management Factor, Powell County	Historically Flood Irrigated Acres	HCV *(Excluding IL)*	On- Farm Efficiency	Field Application	Historic Irrecoverable Losses *(IL):* *Flood 5%*	HCV (*Including IL)*
13.14 inches	77.6%	43 acres	36.5 AF	25%	146.2 AF	7.3 AF	43.8 AF

Table 4. Historic consumed volume (HCV) and field application volume for the historical 90.0-acre hand-line sprinkler place of use:

Powell County Hand-line Sprinkler ET	Historic (1964-1973) Management Factor, Powell County	Historically Sprinkler Irrigated Acres	HCV *(Excluding IL)*	On- Farm Efficiency	Field Application	Historic Irrecoverable Losses *(IL):* *Sprinkler 10%*	HCV (*Including IL)*
13.14 inches	77.6%	90 acres	76.5 AF	70%	109.3 AF	10.9 AF	87.4 AF

12. The portions of the total historic consumption and field application volumes attributed to each water right were calculated according to their proportions of their total combined flow rate of 6 CFS (FOF 10) as they were all historically diverted at the same time and for the same duration. Based on this information, the Department finds the respective historic consumed and field application volumes attributed to the three water rights being changed are 52.5 AF and 102.2 AF for Claim 76G 30103779, 52.5 AF and 102.2 AF for Claim 76G 30103783, and 26.2 AF and 51.1 AF for Claim 76G 30103785. The details of this apportionment can be found in Table 5 below.

Table 5. Total historic consumed and field application volumes for Claims 76G 30103779, 76G 30103783, 76G 30103785:

Water Right No.	Flow Rate	Percentage of Flow	Apportioned HCV *(Including IL)*	Apportioned Field Application Volume
76G 30103779	2.4 CFS	40%	52.5 AF	102.2 AF
76G 30103783	2.4 CFS	40%	52.5 AF	102.2 AF
76G 30103785	1.2 CFS	20%	26.2 AF	51.1 AF
Total	**6 CFS**	**100%**	**131.2 AF**	**255.5 AF**

13. The Applicant submitted a Historic Use Addendum (Form 606-HUA) so that the Department may deviate from the standard methodologies pursuant to ARM 36.12.1902(10) in its assessment of historical ditch conveyance losses. Form 606-HUA attachments included excerpts from the Department's 2002 Upper Clark Fork Ditch Efficiency Assessment (*DNRC Report WR-3.C.2.UCF*) which provides a surface water assessment focused on measuring ditch flows synoptically to quantify ditch seepage gains, losses, and overall conveyance efficiencies in the Helen Johnson Ditch. This study finds that "net losses were observed on all the 5 runs conducted" (p. 3). Results from this study show a conveyance loss range of 39.34%-59.01% in surface flows from the headgate of the Helen Johnson Ditch to Dry Cottonwood Creek (downstream of the

historic place of use). The Applicant submitted additional ditch seepage information which was combined with the DNRC study to arrive at an average conveyance loss rate of 39.8% for the Helen Johnson Ditch extending from the historic point of diversion to the turnout for the historic place of use. Based on this information the Department finds the evidence submitted to support a historical ditch loss rate of 39.8% for the Helena Johnson Ditch to be substantial and credible as it falls within the lower end of the ditch loss rate calculated in the DNRC's Efficiency Assessment of this ditch.

14. According to the standards in ARM 36.12.1902(10), historical diverted volume is equal to the sum of the field application volume and volume of conveyance losses; however, the Department will adhere to the methodology that deviates from ARM which considers conveyance losses to comprise a measured percentage of total diversions rather than a separately calculated volume (per FOF 13). In considering a 39.8% ditch loss rate, the total historic diverted volume associated with the three water rights being changed is calculated as 255.5 AF Historical Field Application Volume ÷ (1 - 0.398) = 424.3 AF. Based on this information, the total historical conveyance loss volume for the three water rights being changed (168.8 AF) is equal to the difference between the historical diverted volume (424.3 AF) and the field application volume (255.5 AF). Table 6 summarizes the portions of the Applicant's total 424.3-AF historical diverted volume and 255.5-AF historical field application volume that are attributable to Claims 76G 30103779, 76G 30103783, and 76G 30103785.

Table 6. Historic diverted volumes for Claims 76G 30103779, 76G 30103783, 76G 30103785:

Water Right No.	Percentage of Flow	Apportioned Field Application Volume	Ditch Loss Rate	Apportioned Historic Diverted Volume
76G 30103779	40%	102.2 AF	39.8%	169.7 AF
76G 30103783	40%	102.2 AF		169.7 AF
76G 30103785	20%	51.1 AF		84.9 AF
Total	**100%**	**255.5 AF**		**424.3 AF**

Table 7. Summary of historic use findings for the water rights being changed:

Water Right No.	Flow Rate	Apportioned Historic Consumed Volume	Apportioned Historic Diverted Volume	Historic Period of Use	Historic Place of Use	Historic Point of Diversion
76G 30103779	2.4 CFS	52.5 AF	169.7 AF	4/20-10/10	NE Sec. 32, W2W2NW Sec. 33, T6N R9W	SENENE Sec. 7 T5N R9W
76G 30103783	2.4 CFS	52.5 AF	169.7 AF			
76G 30103785	1.2 CFS	26.2 AF	84.9 AF			

ADVERSE EFFECT

FINDINGS OF FACT- Proposed Use

15. During the term of the temporary change, the Applicant will discontinue all diversions of irrigation water into the Helen Johnson Ditch, and 133 acres in NE of Section 32 and W2W2NW of Section 33, T6N R9W will be retired from irrigation. The historically diverted flow rate of 6 CFS and volume of 424.3 AF of all three water rights being changed will be appropriated instream in a 4.3-mile reach of the Clark Fork River for the benefit of the fishery resource. The proposed period of use is July 15 to September 30 (77 days).

16. Claims 76G 30103784, 76G 30103782, and 76G 30103778 list the Helen Johnson Ditch as a means of conveyance and are child rights with Claims 76G 30103785, 76G 30103783, and 76G 30103779, respectively. Claims 76G 30103784 and 76G 30103778 are also owned by the Applicant and underwent a temporary change in 2019 that added a purpose of instream flow and changed their point of diversion and means of conveyance from the Helen Johnson Ditch to a pump system in the Clark Fork River (see Change Authorization 76G 30069060). Claim 76G 30103782 is the child right with Claim 76G 30103783 and was owned by the Applicant until it was sold to Tracey L. and Stefanie A. Forcella. In FOF 9 of the Preliminary Determination to Grant Change Application 76G 30069060, the Department found that Claim 76G 30103782 was never historically diverted into the Helen Johnson Ditch despite it being listed as a point of diversion on the General Abstract for this water right. Based on this information the Department determines that child Claims 76G 30103778, 76G 30103782, and 76G 30103784 will not be adversely affected by changes to the historical conveyance operation proposed in this application, and they will still be able to be exercised as they are currently authorized or as they were historically.

17. The receiving streams for return flows and approximate locations of return flow accretion were modeled and identified by DNRC Groundwater Hydrologist Evan Norman in a Surface Water Change Report completed on September 27, 2022. Receiving streams for return flows are determined by proximity to and evidence of hydraulic connection to groundwater which generally do not depend on groundwater flow or land slope. The assumption is made that water applied for irrigation that is not consumed by a crop infiltrates to groundwater becoming return flow and does not run off. The amount of water not consumed is the difference between the amount of water consumed and the amount of water applied to a field.

18. For purposes of this Preliminary Determination, a limited return flow analysis was performed to determine whether return flows resulting from historical irrigation with the water rights being changed entered back into the Clark Fork River prior to or at the location of the next

downstream appropriator (see Department Policy Memorandum on Return Flows, dated April 1, 2016). This policy directs that no further return flow analysis will be undertaken in the source of supply by the Department unless a valid objection is received, provided there will be no enlargement of the amounts of water historically diverted or consumed. A volume of 124.2 AF of return flows associated with the 133-acre historic place of use were modeled by the Department to have historically accreted in the Clark Fork River near the upstream extent of the Applicant's place of use in the NESW of Section 32, T6N R9W. In this instance, the Department finds that there will be no enlargement of Claims 76G 30103779, 76G 30103783, and 76G 30103785 as a result of the proposed temporary change since historically irrigated acres are being retired and the new instream appropriation is non-consumptive.

19. After this change, the historical diverted volume of 424.3 AF will be temporarily appropriated instream with all three water rights from the beginning of the instream place of use in the SENENE Section 7, T5N R9W to the point where return flows historically accreted in the Clark Fork River in the NESW of Section 32, T6N R9W. From the point where return flows historically accreted to the end of the instream place of use in the N2NWNE of Section 32, T6N R9W, the maximum volume of water that may be appropriated instream is equal to the historically consumed volume of 131.2 AF.

20. There are six other water rights with points of diversion within the proposed 4.3-mile instream place of use (upstream of the point of historical return flow accretion). Of these six water rights, only Claim 76G 116495-00 does not list the Helen Johnson Ditch as a means of conveyance and is senior to all three water rights being changed (and therefore could not have relied on return flows resulting from irrigation with the water rights being changed during perfection). The Department finds these water rights will not be adversely affected by this temporary change because historically diverted and non-consumed volumes of water associated with the water rights proposed for change were not historically available upstream of the point where this water returned to the Clark Fork River. The elements of the six irrigation water rights located within the proposed instream place of use are listed in Table 7.

Table 7. Water rights within the 4.3-mile protected instream reach:

Water Right No.	Owner	Priority Date	Flow Rate (CFS)
76G 116490 00	Hans J Lampert, Lampert Ranch LP, Angel Lampert	12/31/1883	3.75
76G 116491 00	Lampert Ranch LP, Hans J Lampert, Angel Lampert	12/31/1875	3.13
76G 116492 00	Hans J Lampert, Lampert Ranch LP, Angel Lampert	2/24/1921	2.5
76G 116493 00	Lampert Ranch LP, Angel Lampert, Hans J Lampert	12/31/1880	7.2
76G 116495 00	Angel Lampert, Hans J Lampert, Lampert Ranch LP	10/1/1871	2.5
76G 30103782	Stephanie A Forcella, Troy L Forcella	7/26/1953	7.88

21. The Applicant will monitor streamflows measured at USGS Stream Gage 12323800 Clark Fork near Galen, MT on a biweekly basis during the period of use (July 15 to September 30). This stream gage is located 1,340 feet downstream of the beginning of the instream place of use and is considered an acceptable initial point of streamflow measurement because there are no intervening diversions between the gage and the historical point of diversion, and because it is proximal to the beginning of the instream place of use. Additional measurements will be collected manually on a minimum biweekly basis in the Clark Fork River at the end of the protected instream reach at Galen Road Bridge once streamflows measured at the USGS stream gage reach 20 CFS. This application will be subject to the following measurement condition:

BETWEEN JULY 15 AND SEPTEMBER 30, THE APPROPRIATOR WILL LEAVE UP TO 6 CFS AND 424.3 AF INSTREAM WITH STATEMENT OF CLAIM NOS. 76G 30103779, 76G 30103783, AND 76G 30103785 TO ENHANCE STREAMFLOWS FOR THE BENEFIT OF THE FISHERY RESOURCE IN THE CLARK FORK RIVER. STREAMFLOWS AS MEASURED AT THE USGS GAGE NO. 12323800 CLARK FORK NEAR GALEN, MT WILL BE OBSERVED BY THE APPROPRIATOR BIWEEKLY BEGINNING JULY 15. WHEN STREAMFLOWS AT USGS GAGE NO. 12323800 REACH 20 CFS THE APPROPRIATOR WILL BEGIN MANUALLY COLLECTING STREAMFLOWS WITH A DEPARTMENT APPROVED METHOD AT THE END OF THE INSTREAM REACH AT GALEN ROAD BRIDGE BIWEEKLY. THE APPROPRIATOR SHALL KEEP A WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER APPROPRIATED INSTREAM. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR TO THE WATER RIGHTS BUREAU CENTRAL OFFICE UNTIL A PROJECT COMPLETION NOTICE IS RECEIVED BY THE DEPARTMENT, AND UPON REQUEST THEREAFTER. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THIS CHANGE.

22. The Department may approve a change in appropriation right if the Applicant proves by a preponderance of evidence that the proposed change will not adversely affect the use of existing water rights pursuant to § 85-2-402(2)(a), MCA. In addition, the Applicant must demonstrate that "the temporary change authorization for water to maintain and enhance instream flow to benefit the fishery resource, as measured at a specific point, will not adversely affect the water rights of other persons." § 85-2-408(3)(a), MCA. If any water right holder believes they will be adversely affected by a change in timing and the amount of return flows resulting from this proposal, they may file an objection to the proposed project pursuant to §§ 85-2-307(3), and -308, MCA. Based on its analysis and guidance provided by policy, the Department preliminarily finds that the changes to return flows resulting from the proposed change will not cause an adverse effect to other water users.

23. The Helen Johnson Ditch has a headgate that will allow for the control of continued irrigation diversion into the ditch by other users following authorization of the change. The headgate will allow for adjustments to the diverted flow rate to ensure that the water being

changed to instream use in the Clark Fork River is not still being diverted into the Helen Johnson Ditch. It will be the responsibility of the remaining Helen Johnson Ditch water users to ensure that they are only diverting their legal flow rates into the ditch.

24. The Department finds there will be no adverse effect from the proposed changes under the terms and conditions set out in this Preliminary Determination.

BENEFICIAL USE

FINDINGS OF FACT

25. The Applicant proposes to temporarily change the purpose and place of use of Claims 76G 30103779, 76G 30103783, and 76G 30103785 to instream flow to enhance streamflows for the benefit of the fishery resource in the Clark Fork River. The entire historically irrigated 133-acre place of use will be retired during the term of this temporary change. The proposed instream place of use consists of the 4.3-mile reach of the Clark Fork River extending from the Helen Johnson Ditch Headgate to Galen Road Bridge. The total volume available to be appropriated instream is 424.3 AF with Claims 76G 30103779 (102.2 AF), 76G 30103783 (102.2 AF), and 76G 30103785 (51.1 AF).

26. The Upper Clark Fork River Basin is categorized as “Chronically Dewatered” by the Montana Department of Fish, Wildlife and Parks (FWP). FWP established a minimum recommended flow rate of 40 CFS and a target flow of 180 CFS in their 1986 Water Reservation for the Clark Fork River from Galen to Deer Lodge. The Applicant refers to further research in the *Upper Clark Fork River Flow Story* (2006) by the Upper Clark Fork River Basin Steering Committee and the *Upper Clark Fork River Basin Aquatic and Terrestrial Resources Restoration Plans* completed by the Natural Resource Damage Program (2019) which confirm a minimum recommended flow for this section of river of 40 CFS. This section of river is currently designated as critical habitat for Bull Trout by the US Fish and Wildlife Service who state that increased instream flow will contribute to the creation of more suitable habitat to meet the needs of the Endangered Species Act requirements.

27. The Applicant will begin monitoring streamflows at USGS Stream Gage 12323800 Clark Fork near Galen at the beginning of the proposed period of use (July 15) on a biweekly basis. The Applicant will begin manually collecting streamflows in the Clark Fork River at Galen Road Bridge on a minimum biweekly basis when streamflows measured at the USGS stream gage reach 20 CFS.

28. Pursuant to § 85-2-102(5)(d), MCA, the use of a water right through a temporary change or lease to enhance instream flows to benefit a fishery resource in accordance with § 85-2-408,

MCA, is considered a beneficial use of water. The Department finds the proposed temporary appropriation of 6 CFS up to a volume of 424.3 AF for the purpose of enhancing and augmenting streamflows for the benefit of the fishery resource in the instream place of use in the Clark Fork River to be a beneficial use of water.

ADEQUATE DIVERSION

FINDINGS OF FACT

29. The proposed temporary change of Claims 76G 30103779, 76G 30103783, and 76G 30103785 is to maintain and enhance streamflows to benefit the resident trout fishery of the Clark Fork River and does not require a means of diversion or conveyance. Per § 85-2-402(2)(b)(ii), MCA, a temporary change in appropriation right for instream flow pursuant to § 85-2-408, MCA, is an exemption to the adequacy of diversion criterion.

POSSESSORY INTEREST

FINDINGS OF FACT

30. Pursuant to § 85-2-402(2)(d)(ii), MCA, the Applicant is not required to prove that they have a possessory interest, or the written consent of the person with the possessory interest in the property where the water is to be put to beneficial use because this application involves a temporary change in appropriation right for instream flow per § 85-2-408, MCA.

TEMPORARY PROTECTED REACH/ MEASUREMENT PLAN

FINDINGS OF FACT

31. The Applicant is proposing to temporarily change the purpose and place of use of Claims 76G 30103779, 76G 30103783, and 76G 30103785 to instream flow for the benefit of the fishery resource in the Clark Fork River for a period of 10 years with the option to renew. During the term of this temporary change the entire 133-acre historical place of use will be retired from irrigation. After this change, the Applicant will appropriate 6 CFS in the proposed 4.3-mile instream place of use in the Clark Fork River, which will extend from the historic point of diversion in the SENENE of Section 7, T5N R9W, to a point in the N2NWNE of Section 32, T6N R9W, at Galen Road Bridge. The proposed period of use is July 15 to September 30. The volume available to be appropriated instream from the beginning of the instream place of use to the point where return flows historically accreted in the Clark Fork River (NESW of Section 32, T6N R9W) is equal to the historically diverted volume of 424.3 AF; below the point at which return flows historically accreted

in the Clark Fork River to the end of the instream place of use, the volume available to be appropriated instream is 131.2 AF, which is equal to the historically consumed volume.

32. The Applicant will monitor flow rates and volumes appropriated for the instream flow purpose using the real-time USGS Stream Gage 12323800 Clark Fork near Galen, MT every two weeks during the proposed period of use (July 15 to September 30). When streamflows at the USGS stream gage reach 20 CFS, the Applicant will begin manually collecting streamflows at the end of the instream reach Galen Road Bridge on a biweekly basis. Annual measurement reports will be submitted to the Central Office of the Water Resources Division's Water Rights Bureau by November 30 of each year until a Project Completion Notice (Form 618) is received by the Department, and upon request thereafter.

33. The Department finds the Applicant has met the additional criteria for a temporary change in appropriation right to maintain or enhance instream flow to benefit a fishery resource under the provisions of § 85-2-408, MCA.

CONCLUSIONS OF LAW

HISTORIC USE AND ADVERSE EFFECT

34. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. McDonald v. State, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986)(beneficial use constitutes the basis, measure, and limit of a water right); Featherman v. Hennessy, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911)(increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); Quigley v. McIntosh, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940)(appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses Town of Manhattan, at ¶ 10 (an appropriator's right only attaches to the amount of water actually taken and beneficially applied).

35. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may

insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. Spokane Ranch & Water Co. v. Beatty, 37 Mont. 342, 96 P. 727, 731 (1908); Quigley, 110 Mont. at 505-11,103 P.2d at 1072-74; Matter of Royston, 249 Mont. at 429, 816 P.2d at 1057; Hohenlohe, at ¶¶43-45.[2]

36. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the "historic use" of the water right being changed. Town of Manhattan, at ¶10 (recognizing that the Department's obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.[3] A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. Quigley, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); Royston, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the applicant failed to provide the Department with evidence of the historic diverted volume, consumption, and return flow); Hohenlohe, at ¶44-45

37. An applicant must also analyze the extent to which a proposed change may alter historic

[2] See also Holmstrom Land Co., Inc., v. Newlan Creek Water District,185 Mont. 409, 605 P.2d 1060 (1979); Lokowich v. Helena, 46 Mont. 575, 129 P. 1063(1913); Thompson v. Harvey, 164 Mont. 133, 519 P.2d 963 (1974)(plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); McIntosh v. Graveley, 159 Mont. 72, 495 P.2d 186 (1972)(appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); Head v. Hale, 38 Mont. 302, 100 P. 222 (1909)(successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, Gassert v. Noyes, 18 Mont. 216, 44 P. 959(1896)(change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff's subsequent right).

[3] A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under §85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. §85-2-234, MCA

return flows for purposes of establishing that the proposed change will not result in adverse effect. The requisite return flow analysis reflects the fundamental tenant of Montana water law that once water leaves the control of the original appropriator, the original appropriator has no right to its use and the water is subject to appropriation by others.

38. Although the level of analysis may vary, analysis of the extent to which a proposed change may alter the amount, location, or timing return flows is critical in order to prove that the proposed change will not adversely affect other appropriators who rely on those return flows as part of the source of supply for their water rights. Royston, 249 Mont. at 431, 816 P.2d at 1059-60; Hohenlohe, at ¶¶ 45-6 and 55-6; Spokane Ranch & Water Co., 37 Mont. at 351-52, 96 P. at 731.

39. While evidence may be provided that a particular parcel was irrigated, the actual amount of water historically diverted and consumed is critical. E.g., *In the Matter of Application to Change Water Right No. 41H 1223599 by MGRR #1, LLC.*, DNRC Proposal for Decision adopted by Final Order (2005). The Department cannot assume that a parcel received the full duty of water or that it received sufficient water to constitute full-service irrigation for optimum plant growth. Even when it seems clear that no other rights could be affected solely by a particular change in the location of diversion, it is essential that the change also not enlarge an existing right. See MacDonald, 220 Mont. at 529, 722 P.2d at 604; Featherman, 43 Mont. at 316-17, 115 P. at 986.

40. The Department's rules reflect the above fundamental principles of Montana water law and are designed to itemize the type evidence and analysis required for an applicant to meet its burden of proof. ARM 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. ARM 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by changes in the amount, timing, or location of historic diversions and return flows. ARM 36.12.1901 and 1903.

41. The Department has adopted rules providing for the calculation of historic diverted and consumptive volumes where the applicant proves by a preponderance of the evidence that the acreage was historically irrigated. ARM 36.12.1902 (16). In the alternative an applicant may present their own evidence of historic beneficial use. In this case Applicant has elected to proceed under ARM 36.12.1902. (FOF Nos. 11-12).

42. Based upon the Applicant's evidence of historic use, the Applicant has proven by a preponderance of the evidence the combined historic use of Water Right Claims 76G 30103779 (2.4 CFS and 169.7 AF), 76G 30103783 (2.4 CFS and 169.7 AF), and 76G 30103785 (1.2 CFS

and 84.9 AF) to be 424.3 AF diverted volume and 6.0 CFS with a combined consumptive use of 131.2 AF. (FOF Nos. 13-14)

43. The Applicant established that the change authorization will be operated in a manner that ensures the amount of water protected instream does not exceed the maximum volume and flow rate during the period of use for the change authorization. Furthermore, the Applicant identified the reach in which instream flows will be protected and provided a detailed measurement plan to ensure that, as conditioned, the change authorization is operated in compliance with § 85-2-408(1) and (8), MCA. (FOF No.15).

44. Based upon the Applicant's comparative analysis of historic water use and return flows to water use and return flows under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued. § 85-2-402(2)(b), MCA. (FOF Nos. 16-24)

BENEFICIAL USE

45. A change applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. §§ 85-2-102(5) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: "[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . ." McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under § 85-2-402, MCA, and new beneficial permits under § 85-2-311, MCA. ARM 36.12.1801. Where the proposed beneficial use is instream flow to enhance the fishery resource, an applicant must prove that that amount of water proposed for change is needed to maintain or enhance instream flows to benefit the fishery resource. Section 85-2-408(3)(b), MCA.

46. The Applicant proposes to use water for instream flow which is a recognized beneficial use of water. § 85-2-102(5), MCA. The Applicant has proven by a preponderance of the evidence instream flow is a beneficial use and that 424.3 AF and 6.0 CFS of water requested is the amount needed to sustain the instream flow beneficial use and are within the standards set by DNRC Rule. § 85-2-402(2)(c), MCA (FOF Nos. 25-28)

TEMPORARY PROTECTED REACH/MEASUREMENT PLAN

47. For a change in appropriation right to maintain or enhance instream flow to benefit the fishery resource, an applicant must "(a) include specific information on the length and location of the stream reach in which the streamflow is to be maintained or enhanced; and... (b) provide a detailed streamflow measuring plan that describes the point where and the manner in which the streamflow must be measured." § 85-2-408(1), MCA.

48. The Department has determined that the Applicant may protect 424.3 AF of historically diverted water at a flow rate of 6 CFS from the historical point of diversion in the SENENE of Section 7 T5N R9W, to the N2NWNE of Section 32, T6N R9W in Deer Lodge County. The Department concludes the length and location of the stream reach in which instream flows will be maintained and enhanced along with the measurement plan satisfy the additional requirements of § 85-2-408(1), MCA. (FOF Nos. 31-33).

PRELIMINARY DETERMINATION

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that Application to Change Water Right Nos. 76G 30103779, 76G 30103783, and 76G 30103785 should be granted subject to the following.

The Department authorizes the Applicant to temporarily change the purpose and place of use of Statement of Claim Nos. 76G 30103779, 76G 30103783, and 76G 30103785 from irrigation to instream flow for the benefit of the fishery resource in the Clark Fork River for a period of up to 10 years. During the term of this temporary change the entire 133-acre historical place of use will be retired from irrigation. The post-change period of use is July 15 and September 30. The instream place of use in the Clark Fork River extends from the historical point of diversion at the Helen Johnson Ditch headgate in the SENENE of Section 7, T5N R9W to Galen Road Bridge in the N2NWNE of Section 32, T6N R9W. The maximum flow rate and volume that may be appropriated instream from the beginning of the instream place of use to the point where return flows historically accreted in the Clark Fork River in the NESW of Section 32, T6N R9W cannot exceed the historically diverted flow rate and volume of 6 CFS and 424.3 AF (2.4 CFS and 169.7 AF with Claim 76G 30103779, 2.4 CFS and 169.7 AF with Claim 76G 30103783, and 1.2 CFS and 84.9 AF with Claim 76G 30103785). From the point where return flows historically accreted to the end of the instream place of use at Galen Road Bridge in the N2NWNE of Section 32, T6N R9W, the maximum volume of water that may be appropriated instream is equal to the historically consumed volume of 131.2 AF with all three water rights being changed (52.5 AF with Claim 76G 30103779, 52.5 AF with Claim 76G 30103783, and 26.2 AF with Claim 76G 30103785).

This application will be subject to the following conditions and remarks:

MEASUREMENT CONDITION

BETWEEN JULY 15 AND SEPTEMBER 30, THE APPROPRIATOR WILL LEAVE UP TO 6 CFS AND 424.3 AF INSTREAM WITH STATEMENT OF CLAIM NOS. 76G 30103779, 76G 30103783, AND 76G 30103785 TO ENHANCE STREAMFLOWS FOR THE BENEFIT OF THE FISHERY RESOURCE IN THE CLARK FORK RIVER. STREAMFLOWS AS MEASURED AT THE USGS GAGE NO. 12323800 CLARK FORK NEAR GALEN, MT WILL BE OBSERVED BY THE APPROPRIATOR BIWEEKLY BEGINNING JULY 15. WHEN STREAMFLOWS AT USGS GAGE NO. 12323800 REACH 20 CFS THE APPROPRIATOR WILL BEGIN MANUALLY COLLECTING STREAMFLOWS WITH A DEPARTMENT APPROVED METHOD AT THE END OF THE INSTREAM REACH AT GALEN ROAD BRIDGE BIWEEKLY. THE APPROPRIATOR SHALL KEEP A WRITTEN RECORD OF THE FLOW RATE AND VOLUME OF ALL WATER APPROPRIATED INSTREAM. RECORDS SHALL BE SUBMITTED BY NOVEMBER 30 OF EACH YEAR TO THE WATER RIGHTS BUREAU CENTRAL OFFICE UNTIL A PROJECT COMPLETION NOTICE IS RECEIVED BY THE DEPARTMENT, AND UPON REQUEST THEREAFTER. FAILURE TO SUBMIT REPORTS MAY BE CAUSE FOR REVOCATION OF THIS CHANGE.

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to § 85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§ 85-2-307, and -308, MCA. If this Application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and § 85-2-309, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the Application with such conditions as the Department decides necessary to satisfy the applicable criteria. E.g., §§ 85-2-310, -312, MCA.

Dated this 24th day of January, 2023.

/Original signed by Danika Holmes/
Danika Holmes, New Appropriations Specialist
Water Rights Bureau Central Office
Department of Natural Resources
and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 24th day of January 2023, by first class United States mail.

CLARK FORK COALITION
C/O ANDY FISCHER
P.O. BOX 7593
MISSOULA, MT 59807

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Maeve Holman, (406) 444-9556